IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1239 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

MAHMEDBHAI REHAMNBHAI VOHRA TRAFFIC INSPECTOR

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 21/06/2001

ORAL JUDGEMENT

Rule. Mr.A.K. Clerk, learned advocate appearing for the respondent workman waives service of the rule. With the consent of the parties, the matter is taken up for final disposal today.

2. The present petition is filed by Gujarat State

Road Transport Corporation (hereinafter referred to as "the Corporation"), challenging the order dated 6.10.2000, passed by the Industrial Tribunal (Gujarat), Nadiad in Reference (ITN) No.124 of 1998, whereby the approval application filed by the petitioner corporation was rejected and the petitioner corporation was ordered to pay a sum of Rs.500/-, towards cost to the respondent workman.

3. The facts giving rise to the present proceedings are that the petitioner corporation filed an approval application under sec.33 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for giving approval to the order dated 17.4.1997 dismissing the respondent workman from the services of the petitioner corporation. The case of the petitioner corporation is that at the relevant time the respondent workman was serving as Assistant Traffic Superintendent (hereinafter referred to as "ATS") at Nadiad. On 6.6.1996, a charge sheet was served upon the respondent workman and thereafter a departmental inquiry was conducted in accordance with the service rules and principles of natural justice. On receipt of the Inquiry Officer's report, a notice dated 1.3.1997 was given to the respondent workman for imposition of penalty to which the respondent workman replied by a letter dated 12.3.1997. After taking into consideration the same, the order of dismissal was passed on 17.4.1997. Thereafter to obtain approval of the Labour Court under sec.33 of the Act, an application was filed which came to be registered as Application (ITN) No.124 of 1998. The approval application was filed by the petitioner corporation mentioning that as a reference bearing No.(IT) 64 of 1996 is pending for hearing, wherein the respondent workman is also the concerned workman and therefore, the application for approval under sec.33 is filed. It is also stated by the petitioner corporation that at the time of passing order of dismissal one month's pay is paid to the respondent workman under sec.33 of the Act; that the act of dismissal of the respondent workman is reasonable and legal and therefore, sanction is required to be accorded. The departmental inquiry held against the respondent workman is legal, as it is in accordance with law with due regard to the principles of natural justice. The petitioner corporation also stated in the approval application that,

" .. .. Besides in any circumstances, the Honourable Tribunal comes to the conclusion that the inquiry was not legal and that the same was defective, in those

circumstances the application is desirous of proving the charge against the respondent workman before the Tribunal by leading proper evidence and therefore, the permission to that effect be granted. .. .. "

4. The Tribunal considered the approval application on one hand, the written statement of the respondent workman, exh.9 on the other, in which he denied the contents of the approval application and stated that there is no dispute about the receipt of charge sheet bearing no.202 dated 6.6.1996, but the report which is referred to in the latter part of the charge sheet was not given along with the charge sheet and that the documents which are referred to in the statement of allegations were not supplied. Hence the statement of allegation is prima facie illegal. The respondent workman, by addressing a letter dated 8.6.1996, had asked for the documents referred to in the statement of allegations, to which the petitioner corporation replied by a letter dated 20.6.1996 and asked the respondent workman to get the copies of documents, but the respondent workman was not allowed to prepare copies of the said documents. The hearing commenced on 20.12.1996, the respondent workman was intimated about the same. Thereafter, on 6.2.1997, the inquiry proceeded in which the respondent workman remained present wherein instead of recording deposition of the reporter, the Inquiry Officer asked certain questions to the reporter which would have been only in cross examination and on the basis of such questions recorded certain details in the inquiry proceedings. It was the case of the respondent workman that the Inquiry Officer's attitude was biased and that he was not given full opportunity to defend himself. The respondent workman cross examined the witnesses of the petitioner corporation. Thereafter on the same day, the Inquiry Officer asked certain questions to the respondent workman, which were in the nature of cross examination. Thus, the Inquiry Officer was in dual capacity, 'the prosecuting agency' and 'the Judge' and thus, the inquiry made by the Inquiry Officer was, on the face of it illegal. The respondent workman was given show cause notice on 1.3.1997 along with the conclusions of the Inquiry Officer. The facts recorded in last para of the conclusion were not supported by any evidence. The inquiry officer had taken into consideration the letters (documents) referred to hereinabove, and did not take into consideration the case of the workman while recording its conclusions. The respondent workman contended that thus, the conclusions recorded by the inquiry officer were not based on facts. In nutshell,

the respondent workman did raise a dispute regarding the legality of inquiry and therefore, application filed by the petitioner corporation was liable to be rejected according to respondent workman.

5. The learned Judge after hearing the parties and taking into consideration the documents produced by them; arguments advanced on their behalf and decisions cited came to the conclusion that the reporter while submitting his statement did not produce letters mentioned in the charge sheet and mentioned in exh.2/1. Respondent workman though demanded said letters by his letter which is at exh.16, he was not given the same. No evidence is produced by the petitioner corporation to show that during the departmental inquiry also such letters were given to the respondent workman. The learned Judge also recorded that the letters which are referred to in the charge sheet are very important documents to prove the guilt of the respondent workman. They are not supplied to the respondent workman. The learned Judge after referring to judgement of Allahabad High Court in the matter of Harinam Sinh Yadav v. Administrator/ Chairman, Cooperative Federation, Lucknow and another, reported in LLR 2000 Page 741, wherein it was held that when the relevant documents mentioned in the charge sheet are not given to the workman, then in those circumstances the inquiry is liable to be quashed. The learned Judge recorded that in the present case the letters/ documents referred to in the charge sheet were not given during the departmental inquiry to the workman and that fact is undisputed. What is more important is that the learned Judge has recorded that after the departmental inquiry was over, by exh.23, on 10.3.1997, in response to an application dated 3.3.1997, the documents which were demanded were supplied. It goes to show that the documents were supplied only after the departmental inquiry was over and thus, it is clear that the petitioner corporation did not supply documents which were referred to in the charge sheet to the respondent workman during the pendency of the departmental inquiry and therefore, the learned Judge recorded that principles of natural justice are violated resulting into not giving complete opportunity to the respondent workman to defend himself.

6. The learned Judge has then proceeded to discuss the findings recorded in the inquiry on merits. The learned Judge has recorded in terms that the petitioner corporation has not proved in the departmental inquiry that there was sufficient crew. The learned Judge has discussed the same in detail and has discussed to the

effect that in cross examination, the reporter has stated that though the sanctioned strength of the crew was 186, as per the muster, only 160 members of the crew were available. The reporter also said that the same is correct and thus, it is clear from the cross examination of the reporter himself that the crew available was less than the sanctioned strength. Thus, the Kilometers which were required to be cancelled, mentioned in the charge sheet cannot be attributed to the respondent workman. It was a result of the shortage of the crew. In such circumstances the respondent workman cannot be held responsible for the same is the prima facie observation of the learned Judge. The learned Judge then proceeded to record that the petitioner corporation has not produced anything to show that during the period for which the charge sheet is given, there was sufficient crew. Not only that the petitioner corporation has not proved the same by producing the muster roll. No such muster roll is produced even in the departmental proceedings. The learned Judge has recorded in terms that the Inquiry Officer has not given details and/ or reasons for recording his conclusions at the end of the departmental inquiry. The Inquiry Officer has also not recorded as to on the basis of which documents the default of the workman is proved. It also appears that the past record of the workman was also not produced during the departmental inquiry. No document suggesting that the loss was on account of the negligence of the respondent workman was produced by the reporter. In the departmental inquiry the respondent workman did state that the driver and the conductor were remaining absent and the respondent workman had taken departmental action against them. The petitioner corporation has taken no care to prove that the statement of the respondent workman is not true. The Inquiry Officer has not given any reasons as to why the aforesaid fact stated by the respondent workman was not accepted. The learned Judge has also recorded that the respondent workman had submitted during the departmental inquiry that one of his daughters was suffering from serious disease and there was an occasion of marriage of his second daughter; therefore, he was on leave. In fact the ailing daughter had expired due to the ailment at a later stage. It is also stated by the respondent workman that during his leave period the petitioner corporation did not arrange for any other ATS in his place and therefore, the Kilometers which were required to be cancelled was the result of that non action of the petitioner corporation. It is not proved by the department in the departmental proceedings that the aforesaid facts stated by the respondent workman were not true. In spite of that the

Inquiry Officer has not given any reasons for not accepting the case of the respondent workman. The learned Judge has also recorded that it was the case of the respondent workman that he was promoted to the post of ATS only on 14.9.1995. Therefore, he was not having sufficient experience of the post of ATS and as he was on leave there may be some mistake on his part. Taking into consideration all the aforesaid discussion, the learned Judge has recorded that the Inquiry Officer has not recorded conclusions on the basis of the evidence produced in the departmental inquiry. Though it was the duty of the reporter to produce the documents referred to in the charge sheet the reporter did not produce the said documents. The reporter did not give any justifiable reason for the same. Finally, the finding is recorded that the conclusions recorded by the Inquiry Officer is contrary to the documentary evidence led in the departmental inquiry. The learned Judge did take into consideration that the past record of the respondent workman is not produced in the departmental inquiry. It is not on record that the respondent workman had committed a similar negligence in the past and therefore, he is awarded the present punishment. Thus, the negligence which is alleged in the charge sheet is the 'first instance' during the service of the respondent workman and therefore, as the charges levelled against the respondent workman are not proved, the application came to be rejected by the learned Judge.

7. Learned advocate Mr.Raval appearing for the petitioner corporation submitted that the petitioner corporation having pleaded in the approval application itself that in case the Honourable Tribunal comes to the conclusion that the inquiry was not legal and was defective, in such situation the petitioner corporation intends to prove the charge by leading appropriate evidence before the Tribunal. The Tribunal was under an obligation to give such opportunity to the petitioner corporation. To that extent judgement rejecting the application is to that extent bad in law and requires to be quashed and set aside. Mr.Raval, learned advocate heavily relied on the judgement of the Apex Court in the matter of Karnataka State Road Transport Corporation v. Smt. Lakshmidevamma reported in 2001 LLR 529. Mr.Raval, learned advocate submitted that the Apex Court has, in terms, laid down in the said judgement that it was obligatory on the part of the Tribunal to decide the issue of validity of the inquiry as preliminary issue and in not doing so the Tribunal has committed an error on account of which the order is vitiated and therefore, the judgement and order are required to be quashed and set

aside by this Court. Mr.Raval relied upon the observations of the Honourable Apex Court in the case of KSRTC v. Lakshmidevamma (supra) made in para 13, which read as under:

"13. The above judgment in DCM's case came to be considered against by this Court in the case of Cooper Engineer Limited v. Sri P.P. Mundhe, 1976(1) SCR 361, wherein this Court held:

"We are, therefore, clearly of the opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour court should first decide as a preliminary issue whether the domestic inquiry has violated the principles of natural justice. When there is no domestic inquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

8. Mr.Raval, learned advocate emphasised that the observations of the Honourable Apex Court in the matter between The Cooper Engineering Ltd. v. P.P. Mundhe, reported in AIR 1975 SC 1900, which read as under:

".. .. But when the matter is in controversy between the parties that question must be decided as a preliminary issue."

Mr.Raval, learned advocate also relied upon further observations of the Apex Court in the case of KSRTC v. Smt. Lakshmidevamma (supra) made in para 33 which read as under:

"33. In none of the aforesaid cases, however, the question as to which stage the employer should make a prayer for adducing evidence came up for consideration. This question came to be considered in Delhi Cloth and General Mills Co. v. Ludh Budh Singh, 1972 (1) SCC 595. It was held therein that the management should avail of the opportunity to adduce evidence by making a suitable request to the Tribunal before the proceedings are closed. The principles laid down in DCM's case insofar as relevant for the present purposes are as contained in subparas 4 and 5 of para 61 of the report which read as under:

"(4) When a domestic inquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic inquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic inquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by

adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct."

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper." (emphasis supplied)

Mr.Raval submitted that the Apex Court has said that,

"However, elaborate and However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic inquiry."

9. Mr.Raval submitted that once having taken the plea in the approval application itself the management had discharged its obligation of praying for opportunity to lead additional evidence and then it was the obligation of the Tribunal to given an opportunity to the management before finally adjudicating upon the application. Mr. Raval submitted that the validity of the inquiry should be decided as a preliminary issue as the management has already taken that contention in the approval application and thereafter no further steps are obligatory on the part of the management.

10. Mr.Raval submitted that the Apex Court has held in the judgement between Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and another, reported in AIR

1979 SC 1652 that if a request is made in the statement of claim, application or written statement, the Labour Court or Tribunal must give such an opportunity to the management to adduce additional evidence. Mr.Raval's reading of the said judgement is not correct in view of the discussion held hereinabove. There is no dispute about right of the management to adduce evidence. There is no dispute that the Labour Court or industrial tribunal is under obligation to give such an opportunity to the management. The question is what procedure is to be followed by the management to get this opportunity. It is amply clear from the judgment of the Apex Court discussed hereinabove that two steps are required, namely,

(i) that the management must disclose its intention of adducing additional evidence and proving guilt of the respondent workman if departmental inquiry is going to be held invalid by the Court, by disclosing that intention in cases of application under sec.33 in the application itself and soonafter the controversy is raised by the respondent workman by filing his written statement an application is made and opportunity is sought for. In cases of reference under sec.10 the management must in reply to the statement of claim filed by the workman shall disclose its intention and shall accompany that written statement by an application for an opportunity. As the facts stand in the present case the management in this case did comply with none of these steps and felt contented only by making a simple averment in the approval application. After the respondent workman filed his written statement and raised challenge to the validity of the inquiry the management after having received that reply of the workman did not file any application requesting the tribunal to adjudicate on the validity of the inquiry as a preliminary issue, nor did the management file any application seeking permission to adduce any additional evidence.

The contention of Mr.Raval, learned advocate does not find favour. Hence it is rejected.

11. On the other hand Mr.A.K. Clerk, learned advocate for the respondent workman submitted that from various judgements of the Supreme Court, namely, in the matter of Shambhu Nath Goyal v. Bank of Baroda and others, reported in AIR 1984 SC 289 and in the matter

between Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and another, reported in AIR 1979 SC 1652 and even on reading the present judgement itself on which the learned advocate for the other side has relied upon, it is clear that the management does have a right to pray for an opportunity to lead additional evidence in case when validity of the departmental inquiry is in question. In both the events, namely, in the matter of reference under sec.10 and in the matter of application for approval or sanction under sec.33, that opportunity can be available to the management only if at the first available opportunity the management does pray for the same. Mr.Clerk, learned advocate submitted that in the matter of an application for sanction or approval under sec.33 at the first opportunity of filing an application, the management shall pray for such opportunity or shall keep its right reserved in the application itself as is done in the present case. Mr.Clerk further submitted that the subsequent step is that in the matters of an application for sanction or approval under sec.33, when the respondent workman files a written statement and takes the contention that the inquiry is not valid, on receipt of that written statement, the management shall then make an application requesting the Tribunal to decide that issue as a preliminary issue. Mr.Clerk submitted that in the present case the management after having mentioned or after having kept its right reserved in the approval application, after filing of the written statement by the respondent workman, did not make any application to the Tribunal to decide the issue of validity of the inquiry as preliminary issue. Mr. Clerk further submitted that if the parties do not make such an application on having come to know that there is a controversy regarding validity of the inquiry, it is not proper to say that. 'it is obligatory on the part of the Tribunal to decide that issue as a preliminary issue'. Mr.Clerk said that on reading the extracts of various earlier judgements of the Honourable Apex Court, produced in the judgement of Karnataka State Road Transport Corporation (supra), it is clear that, "once a dispute is raised regarding validity of inquiry, it is to be decided by the Tribunal as a preliminary issue", but none of the judgements of the Apex court says that. "it is the duty of the Tribunal to raise for itself such issue as a preliminary issue and then to decide the same." Mr.Clerk submitted that it is clear from the reading of these judgements of the Apex Court that controversy has always been that at what earliest stage this opportunity can be given to the management. Mr.Clerk submitted that in the matter of reference under sec.10 a statement of claim is filed by the workman and in that, if he raises a plea

about validity of the inquiry, the management gets an opportunity to disclose its intention of getting the point of validity of inquiry decided as a preliminary issue in its written statement. By that itself the Tribunal is not supposed to raise said issue as a preliminary issue and decide the same. He further submitted that as a matter of practice, along with the written statement the management has to make an application praying that the point of validity of inquiry be tried as a preliminary issued. The management has to make another application praying that in case the Tribunal holds that the inquiry is not valid, the management be permitted to adduce evidence to prove the guilt of the workmen by leading additional evidence. Mr.Clerk says that on reading the judgements of the Apex Court, the Tribunal is under no obligation to raise any issue as a preliminary issue of its own and decide. Mr.Clerk relied upon the observations of the Apex court in para 15 of the judgement in the case of Karnataka State Road Transport Corporation (supra), which read as under:

"15. The question again arose in the case of Shambhu Nath Goyal's case (supra) as to the propriety of waiting till the preliminary issue was decided to give an opportunity to the management to adduce evidence, because after the decision in the preliminary issue on the validity of the domestic inquiry, either way, there was nothing much left to be decided thereafter. Therefore, in Shambhu Nath Goyal's case this Court once again considered the said question in a different perspective. in this judgement, the Court after discussing the earlier cases including that of Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and another, 1979 (3) SCR 1165, which was a judgement of this Court subsequent to that of Cooper Engineering (surpa), the following principles were laid down:

"We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage in the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its

> permission under sec.33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defeat in the domestic inquiry by the written statement of defence filed by him in the application filed by the management under sec.33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under sec.10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim. Statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wracking the morale of the workman and compel him to surrender which he may not otherwise do."

12. Mr.Clerk submitted that the nature of the controversy before the Apex Court was that at what stage the management should be allowed to have this opportunity of leading additional evidence. The controversy is resolved by the Apex Court by saying that there are two other things which are required to be done by the management, namely, (i) in case of applications under sec.33 either for sanction or approval, that right is to

be reserved by the management in its own application at the first instance. Thereafter, on the controversy being raised by the respondent workman, the management must make an application for deciding that issue as a preliminary issue, and (ii) In matters of reference under sec.10, in written statement itself, the management must disclose its intention and make an application for trying the issue as a preliminary issue.

13. In the present case the learned Judge after having held that the inquiry is vitiated on account of breach of principles of natural justice, as sufficient opportunity to defend was not given to the respondent workman, has then examined the conclusion/ findings recorded by the Inquiry Officer on merits. Even on merits it is found that the same are not borne out from the evidence led before the Inquiry Officer.

14. Mr.Clerk, learned advocate appearing for the respondent Corporation invited attention of this Court to a judgement of the Apex Court in the matter of M/s Bharat Iron Works v. Bhagubhai Balubhai Patel and others, reported in AIR 1976 SC 98, wherein the Apex Court was examining the power of the Tribunal to interfere with the order of dismissal passed in domestic inquiry. The Honourable Court was pleased to hold that if it is a case of victimisation or if it is a case of manifest error of law on the part of the Tribunal in concluding that management was guilty of victimisation, the High Court was justified in dismissing the writ petition in limine. Mr.Clerk further pointed out that the Apex Court has held in paras 2 & 3 which reads as under:

"2. There is a two fold approach to the problem and if lost sight of, it may result in some confusion. Firstly, in a case where there is no defect in procedure in the course of a domestic inquiry into the charges for misconduct against an employee, the Tribunal can interfere with an order of dismissal on one or other of the following conditions:

(1) If there is no legal evidence at all recorded in the domestic enquiry against the concerned employee with reference to the charge or if no reasonable person can arrive at a conclusion of guilt on the charge levelled against the employee on the evidence recorded against him in the domestic enquiry. This is what is known as a perverse finding.

(2) Even if there is some legal evidence in the domestic enquiry but there is no prima facie case of guilt made out against the person charged for the offence even on the basis that the evidence so recorded is reliable. Such a case may overlap to some extent with the second part of the condition no.1 above. A prima facie case is not, as in a criminal case, a case proved to the hilt.

3. It must be made clear in following the above principles, one or the other, as may be applicable in a particular case, the Tribunal does not sit as a court of appeal, weighing or reappreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence in the domestic enquiry as it is in order to find out either whether there is a prima facie case or if the findings are perverse."

15. In view of the aforesaid discussion the present petition is found without any substance. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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